

Amendment
USSN 09/771,664

REMARKS

Claims 1-7 are all the claims pending in the application.

Claims 1-7 remain in the application, the claims having been editorially amended.

Reconsideration of the application and allowance of all claims are respectfully requested in view of the above amendments and the following remarks.

Applicant notes with appreciation the indication of allowable subject matter in claims 1-4. A minor editorial amendment has been made to claim 1, and allowance of those claims is again requested.

Claims 5-6 stand rejected under 35 USC 112 as failing to particularly point out and distinctly claim the invention. This rejection is respectfully traversed.

The alleged basis for this rejection is that claim 5 recites both an apparatus and a method of using it. However, claim 5 is simply in “means plus function” format where various elements are defined in terms of the functions they perform. It is not a method claim, and recites no method steps. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 5-7 stand rejected under 35 USC 101, on the grounds that claim 5 does not recite either a process or a machine but instead overlaps two different statutory classes of invention. This rejection is also respectfully traversed.

First, it is not understood why claims 5-7 are grouped together in this rejection. The alleged basis for rejection is a problem with claim 5, but neither of claims 6 or 7 depend from claim 5. Clarification is requested.

Second, claim 5 is directed to a network element. There is nothing unclear about the statutory class to which it belongs.

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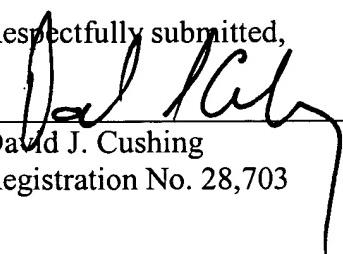
Third, claim 6 is directed to a computer program. As now amended, it is directed to a computer running the computer program. A programmed computer is clearly statutory subject, e.g., as discussed in MPEP 2106.IV.

Finally, claim 7 is directed to a computer readable medium having a program stored thereon. Again, nothing unclear about the statutory class to which it belongs. See, for example, MPEP 2106.IV. and *In re Beauregard et al*, 53 F.3d 1583; 1995 U.S. App. LEXIS 10565; 35 U.S.P.Q.2D (BNA) 1383 (Fed. Cir. 1995), where the USPTO made it clear that is considered a computer program stored on a tangible medium to define statutory subject matter.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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